

PHILLIP A. TALBERT  
United States Attorney  
KIMBERLY A. SANCHEZ  
Assistant United States Attorney  
2500 Tulare Street, Suite 4401  
Fresno, CA 93721  
Telephone: (559) 497-4000  
Facsimile: (559) 497-4099

Attorneys for Plaintiff  
United States of America

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,

v.

AMADO ESCOBEDO, JR. and  
DOROTEA GONZALEZ  
Defendants.

CASE NO. 1:21-CR-00222 ADA-BAM

STIPULATION CONTINUING STATUS  
CONFERENCE AND REGARDING  
EXCLUDABLE TIME PERIODS UNDER SPEEDY  
TRIAL ACT; FINDINGS AND ORDER

DATE: May 10, 2023

TIME: 1:00 p.m.

COURT: Hon. Barbara A. McAuliffe

This case is set for a status conference on May 10, 2023 in front of the Honorable Barbara A. McAuliffe, U.S. Magistrate Court Judge. The parties stipulate and request to continue the status conference to July 12, 2023 at 1:00 p.m. This case involves complex issues and intersecting state and federal cases, and counsel need additional time based in part on state timing, and also to review discovery, conduct additional investigation, and engage in additional discussions with the government before doing so. The Court's minute order directed the parties to agree on a trial date. While the parties are still engaged in discussions and further investigation and believe a further status will help conclude that process, should the Court want to set a trial date, the parties request a trial set for January 23, 2024 at 8:30 am.

On May 26, 2021, the Court issued General Order 631, which provided for a reopening of the courthouse in June 2021, recognized the continued public health emergency, continued to authorize video or teleconference court appearances in various cases, and noted the court's continued ability under

the Coronavirus Aid, Relief, and Economic Security (CARES) Act (the “Act”) to continue trials and other matters, excluding time under the Act. On June 27, 2022, the Court issued General Order 652, which “authorized the use of videoconference and teleconference technology in certain criminal proceedings under the in the Eastern District of California.” This and previous General Orders highlight and were entered to address public health concerns related to COVID-19.

Although the General Orders address the district-wide health concern, the Supreme Court has emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally or in writing”).

Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory and inexcusable—General Orders 611, 612, 617, 631, 652 and 662 require specific supplementation. Ends-of-justice continuances are excludable only if “the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics, natural disasters, or other emergencies, this Court has discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the

September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

In light of the societal context created by the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4).<sup>1</sup> If continued, this Court should designate a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

### STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendants, by and through defendants’ counsel of record, hereby stipulate as follows:

1. The parties need additional time to further investigate/explore matters related to resolving the case or setting a trial date.

2. By this stipulation, defendants now move to continue the status conference, and to exclude time from May 10, 2023 to July 12, 2023 or February 21, 2024 depending on whether the Court sets the case for further status on May 10 or trial on February 21 under Local Code T4.

3. The parties agree and stipulate, and request that the Court find the following:

a) The government has represented that the discovery associated with this case includes investigative reports, and related documents in electronic form. All of this discovery has been either produced directly to counsel and/or made available for inspection and copying. The parties have made progress in investigating the foundation for and discussing options to move the case forward to pleas or a trial. Defense would like additional time to investigate the options and foundations for the options further.

b) The parties discussed a trial date, and because of conflicting schedules, other trials counsel has set (including defense counsel Bermudez’s *U.S. Marcus Tatum*, 1:20-CR-00255, which she anticipates proceeding to trial), the parties agreed to request February 21, 2024 for trial.

---

<sup>1</sup> The parties note that General Order 612 acknowledges that a district judge may make “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D. Cal. March 18, 2020).

1 c) The government does not object to the continuance.

2 d) In addition to the public health concerns cited by the General Orders and  
3 declarations of judicial emergency, and presented by the evolving COVID-19 pandemic, an  
4 ends-of-justice delay is particularly apt in this case because:

- 5 • Defendant's ability to prepare for trial or a plea has been inhibited by the public  
6 health emergency;
- 7 • Defendant needs additional time to review discovery, and conduct additional  
8 investigation; and
- 9 • The parties need additional time to investigate/explore matters related to  
10 proceeding via plea or trial.  
11

12 e) Based on the above-stated findings, the ends of justice served by continuing the  
13 case as requested outweigh the interest of the public and the defendant in a trial within the  
14 original date prescribed by the Speedy Trial Act.

15 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,  
16 et seq., within which trial must commence, the time period of May 10, 2023 to July 12, 2023 or  
17 February 21, 2024 depending on whether the Court sets the case for further status on May 10 or  
18 trial on February 21, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A),  
19 B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendant's  
20 request on the basis of the Court's finding that the ends of justice served by taking such action  
21 outweigh the best interest of the public and the defendant in a speedy trial.

22 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the  
23 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial  
24 must commence.

25 IT IS SO STIPULATED.  
26  
27  
28

1 Dated: May 4, 2023

PHILLIP A. TALBERT  
United States Attorney

2  
3 /s/ KIMBERLY A. SANCHEZ  
KIMBERLY A. SANCHEZ  
Assistant United States Attorney

4  
5 Dated: May 4, 2023

/s/ MONICA BERMUDEZ  
MONICA BERMUDEZ  
Counsel for Defendant

Amado Escobedo, Jr.

6  
7 Dated: May 4, 2023

/s/ PETER JONES  
PETER JONES  
Counsel for Defendant  
Doroteo Gonzalez

8  
9  
10 **ORDER**

11 IT IS SO ORDERED that the status conference set for May 10, 2023, is vacated. A jury trial is set  
12 for **February 21, 2024, at 8:30 a.m. before District Judge Ana de Alba**. Estimated time of trial is **5**  
13 **days**. A trial confirmation is set for **February 5, 2023, at 8:30 a.m. before District Judge Ana de Alba**.  
14 Time is excluded through trial pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv).

15  
16 IT IS SO ORDERED.

17 Dated: May 8, 2023

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE